

In Defense of Public Privacy in U.S.

By DAVID BURHAM
Special to The New York Times

WASHINGTON, Jan. 20 — From a one-room office on the second floor of the carriage house behind his Capitol Hill home, Robert Ellis Smith, a 43-year-old lawyer and former newspaper reporter, sounds the alarm about maintaining freedom and privacy in the computer age.

Now entering his 10th year as the owner, publisher and principal reporter of Privacy Journal, a monthly newsletter that charts the impact of technology on the rights of the American people, Mr. Smith, a kind of one-man lobby, worries that today, as much as ever, the nation is threatened by the widespread intrusions described in "Nineteen Eighty-Four," George Orwell's novel.

"We haven't reached the Orwellian nightmare yet, in part because the Government is somewhat inefficient," he said recently. "But what we are allowing the computers to do to our society is still quite upsetting. We seem to feel that the computers have so much information about us that we shouldn't take any risks, that we should be compliant people."

Mr. Smith says public interest in privacy issues reached a peak in the period 1975 to 1977, when abuses of Government power were uncovered in the Congressional investigations of the Watergate scandals and activities of the Central Intelligence Agency, resulting in the creation of the Privacy Protection Study Commission, which issued a national report in 1977. "But with 1984 here," he added, "issues raised in George Orwell's novel seem to have revived a good deal of interest about where our society really is headed."

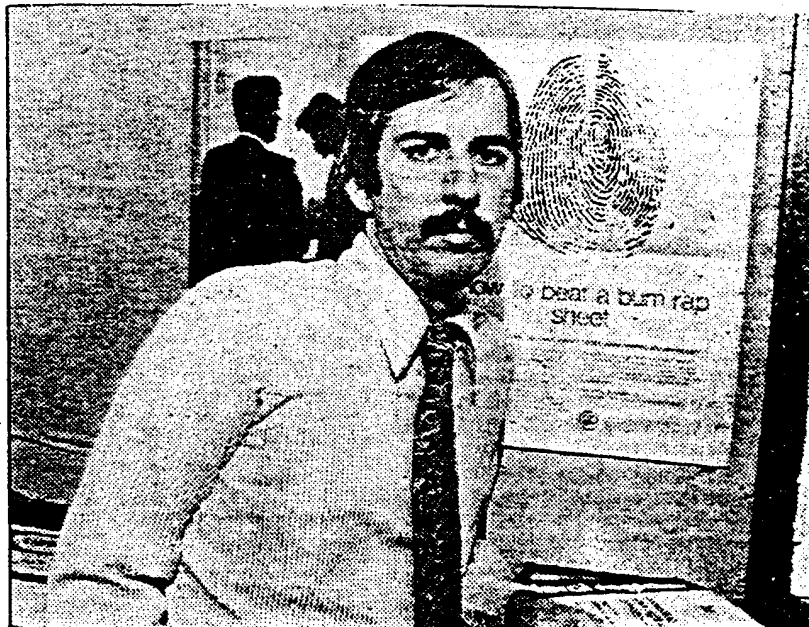
Regulations About Privacy

Because the great Federal agencies such as the Internal Revenue Service, the Federal Bureau of Investigation and the National Security Agency have headquarters here, Washington is the fountain of regulations affecting individual privacy and thus the natural base for Mr. Smith.

Congress frequently holds hearings about privacy abuses concerning both the Government and private industry and periodically passes legislation dealing with privacy, such as the Privacy Act, a law that gives Americans certain information rights, including the power to see and correct records held about them by Federal agencies.

The Congressional Record, court decisions and obscure regulations published in the Federal Register are the raw materials of Mr. Smith's newsletter. Occasionally a Congressional hearing will lure him out of his office. Often he gets tips from officials who share his concerns.

"Since my first days as a reporter,



Robert Ellis Smith, owner and publisher of the Privacy Journal.

the struggle of the individual against the institution always has been one of my central interests," Mr. Smith said of his work. On one wall of his spacious, sunny office, situated just seven blocks from the Capitol, bookshelves bulge with reports and studies and other volumes touching on the hundreds of different issues that concern him. A small cast-iron stove and a stack of wood take up a good portion of another wall.

'Pernicious Technology'

One bit of noncomputer technology that Mr. Smith has devoted many articles to in his neatly printed newsletter is the polygraph, or lie detector, a device designed to measure the stress felt by a subject when he is asked a series of questions. The polygraph is now routinely used within the C.I.A. and the National Security Agency to try to anticipate security problems.

Last year the Reagan Administration issued a directive vastly expanding the use of the polygraph for investigating the unauthorized disclosures of sensitive information, but Congress recently approved legislation postponing these procedures until this spring.

"Government and business use this pernicious technology in a way to convince people that machines can do something that people cannot, that machines can get into someone's brain," Mr. Smith said. "I agree with those who describe polygraphs as 20th-century witchcraft, a modern version of the Medieval world's trial by fire."

Mr. Smith is critical of how Government has responded to the challenge of the new technology. "The Supreme Court under Chief Justice Warren Burger has taken a restrictive view about privacy rights," he observed. "If the invasion did not occur in the marital bedroom, the Court seems to feel there has been no invasion at all. Also, most of the Federal courts have been slow to recognize that the new computer technologies can elevate an action which once was not important to an action that poses significant constitutional questions."

Mr. Smith believes, however, that one of the fundamental problems may lie in the Constitution itself. "The Constitution imposes no restriction on the actions of private corporations, only on Government agencies," he said. "The Founding Fathers established a system of checks and balances for the Government. For most people, being searched by the police is a remote possibility. But being subjected to physical searches by your employer or computerized searches by insurance companies and credit-reporting companies is quite likely."

Mr. Smith charges \$89 a year for his newsletter, which now has a monthly circulation of about 1,500, down from a peak of 2,000 in the post-Watergate years in the mid-1970's. He said there had been a recent surge in sales.

"I don't see any signs that the trend toward more and more control of the individual is being retarded," he said, "but I'm not going to stop trying."

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